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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,761	08/06/2003	Aalze Veenstra	04132.0028.00US00	6865
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HOWREY SIMON ARNOLD & WHITE LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DR., SUITE 200 FALLS CHURCH, VA 22042			EXAMINER NOLAND, THOMAS	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/634,761

Applicant(s)

VEENSTRA ET AL.

Examiner

Thomas P. Noland

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11102003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. The drawings are objected to because in at least fig. 1 "box" elements 1, 5, 10, 32, 33 and 17 should also be identified with legends. Fig. 5 should apparently be legended -- Prior Art --. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the

examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

5. The disclosure is objected to because of the following informalities: on page 17, line 30 the application number and filing date should be inserted and if patented at the time of any response up until allowance or abandonment, the patent no. Likewise the insertion - - - now abandoned - - - should be provided if appropriate.

Appropriate correction is required.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5-8 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent for "the measured time" in claim 5, line 4. It is unclear what is meant by "or the like" in claim 11, line 3.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, 4 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassidy et al GB 2151801.

Note abstract, drawings of page 1, lines 126-130. Re claims 2 & 4 since the microcomputer compares with predetermined values it inherently includes an input device. It could be used "for" inputting the data claimed.

10. Claims 1-2, 4 and 17 are rejected under 35 U.S.C. 102(b) as being anticipate by Uttinger US 6,006,615, cited in IDS. Note col. 2, line 45-col. 4, line 67, abstract and figs. 1-3A.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 5-8, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Van den Berg EP 761091, cited in IDS.

Uttinger does not specifically disclose cleaning stage specific thresholds but such would have been obvious expedient to better monitor cleaning in view of the teaching by Van den Berg of monitoring quantities at different stages of the cleaning of the milker in col. 2, line 15-col. 3, line 40. The automation of the system in Van den Berg by monitoring different quantities at various points in the process would make obvious the auto selection of threshold in claims 6-8. Note also the abstract, drawing, col. 3, lines 13-30 and col. 4, lines 17-21 of Van den Berg.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Gurney US 4,710,755, cited in IDS.

Uttinger does not teach monitoring of the stirring element but such is a known expedient of monitor to ensure proper function in milk handling systems as evidenced by the teachings of such monitoring in col. 2, lines 49-61 of Gurney. Note also its abstract and drawing.

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Lidman W0 01/19175, cited in IDS.

Uttinger does not teach monitoring of color as quantity of interest but such is known to provide useful information in similar such milkers as evidenced by page 3, line 22-page 4, line 4 of Lidman and would have been an obvious expedient to have incorporated into a system similar to that of Uttinger to provide the utility of such information.

15. Claims 10-13, are rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Van den Berg and Buck US 6,089,242.

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Buck.

Uttinger in view of Van den Berg et al shows that a valve controlled milker with conductivity and temperature monitoring means is known. However, it does not specifically teach monitoring of valve position but such is a known expedient to help

better control such systems as evident from col. 3, lines 5-9 of Buck. Note also Buck's drawings and abstract.

re claim 12 Uttinger in col. 7, lines 21-24 teaches monitoring of temperature in the discharge line.

Buck also teaches system control based on sensed data. While not specifically disclosing a control connected to an alarm such would have been an obvious preventive means to prevent unwanted operation when undesirable conditions were met in view of its teaching of the use of alarm and control and Uttinger's teaching of an alarm also.

16. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uttinger in view of Van den Berg and Buck as applied to claim 10 above, and further in view of Lidman.

Lidman is applied as in paragraph 14 above.

17. Claims 1-2, 4 and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of copending Application No. 10/604,619 (see also US 2004/0107913). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention of claim 5 of 10/604,619 was made that similar monitoring could be done in the milk tank instead of the milk line especially in view of the limitation "has been present in a milk line" since typically such lines are connected to milking tanks.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show milking system monitors.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (571) 272-2202. The examiner can normally be reached on weekdays from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached on (571) 272-2208.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to 2800 Customer Service at (571) 272-2815.

5/19/05  
**Thomas P. Noland**  
**Primary Examiner**  
**Art Unit 2856**

Noland/ds  
05/09/05

